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Appn. No.: 10/005,789
Amendment dated September 29, 2005
Reply to Office Action mailed June 29, 2005

REMARKS/ARGUMENTS

The Office Action of June 29, 2005 has been carefully reviewed and these remarks are responsive thereto. Reconsideration and allowance of the instant application are respectfully requested.

Independent claim 1 and dependent claims 2, 4-7 and 18-23 are pending. Claims 1, 2, 4, 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 5,643,203 to Rise ("Rise") in view of U.S. Patent No. 5,584,885 to Seckel ("Seckel"). Claims 7, 18, and 19 were rejected over Rise in view of Seckel and in further view of U.S. Pat. No. 5,738,129 to Medenica *et al.* ("Medenica"). In response, Applicants respectfully traverse the rejection with the following remarks.

Rejection Under 35 U.S.C. § 103(a) – Rise in View of Seckel and Medenica

Claims 1, 2, 4, 20-23 were rejected under § 103(a) over Rise in view of Seckel

As the Examiner is aware, it is improper hindsight reconstruction to use the present application as a road map to combine references to form the present invention. Therefore, in order to support a *prima facie* case of obviousness, there must be some motivation or suggestion to combine the references. Applicants respectfully assert this motivation or suggestion does not exist outside of the present application.

The Office Action suggests that Rise does not disclose medicaments with living cells but that Seckel corrects this deficiency. Therefore, the Office Action indicates that Seckel is being used for the idea of the medicament with living cells. Assuming for the purpose of argument that Seckel does disclose a medicament including living cells, the Applicants respectfully submit that the combination of Seckel and Rise still fails to support a *prima facie* case of obviousness.

Seckel discloses directing medicaments into a chamber. Seckel, however, fails to disclose that these medicaments may be delivered with a catheter. Applicants are unaware of anything in Seckel that provides any support, motivation or suggestion to modify Rise to reach the present invention. Nor has the Office Action pointed to anything anywhere else that suggests such a modification. Therefore, nothing in the record supports modifying Rise with Seckel to reach the present invention. Accordingly, the combination of Rise and Seckel is improper. See MPEP 706.02(j) ("To establish a *prima facie* case of obviousness, three basic criteria must be

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met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings."). Thus, independent claim 1 is believed to be in condition for allowance.

Claims 2, 4-6, and 20-23 depend from claim 1 and are believed to be allowable for all the above reasons and because of the additional limitations recited therein.

Claims 7, 18 and 19 were rejected under § 103(a) over Riese in view of Seckel in further view of Medenica. Applicants respectfully submit that Medenica does not correct the above noted deficiency. Therefore, for the reasons discussed above and for the additional limitations recited therein, claims 7, 18 and 19 are believed to allowable over the references of record.

Accordingly, withdrawal of these grounds of rejection is respectfully requested.

CONCLUSION

All rejections and objections having been addressed, Applicant respectfully submits that the instant application is in condition for allowance, and respectfully solicits prompt notification of the same.

Respectfully submitted,

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